

MEMORANDUM

May 2, 2006

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: EDWARD YEN
Senior Associate County Counsel
Health Services Division

RE: Olive Tree, Inc. v. City of Los Angeles, et al.
Los Angeles Superior Court Case No. BC 312514

AUTHORITY

REQUESTED: \$50,000

COUNTY DEPARTMENT OF HEALTH SERVICES - ENVIRONMENTAL
DEPARTMENT: HEALTH

CLAIMS BOARD ACTION:



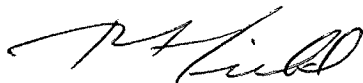
Approve



Disapprove



Recommend to Board of
Supervisors for Approval



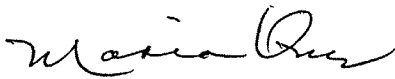
, Chief Administrative Office

ROCKY ARMFIELD



, County Counsel

JOHN F. KRATTLI



, Auditor-Controller

MARIA M. OMS

on

May 15

, 2006

SUMMARY

This is a recommendation to settle for \$50,000, a lawsuit filed by Olive Tree, Inc. ("Olive Tree") against the County of Los Angeles ("County"), and Liza Frias (a former County employee) for (1) intentional interference with contractual relations; (2) intentional interference with prospective economic advantage; (3) slander; and, (4) trade libel.

LEGAL PRINCIPLES

A public entity is liable for the negligent and intentional acts of its employees, when those acts are done in the course and scope of employment.

An individual may be liable for intentional interference with contractual relations and intentional interference of prospective economic advantage if he or she acted intentionally and maliciously to close down a business and ensure that its principals would not continue to do business. A claim for slander and libel may be established if it is determined that false and damaging information was disseminated.

SUMMARY OF FACTS

This matter arises from a complaint received by the Environmental Health Bureau of the Los Angeles County Department of Health Services ("Environmental Health") on April 4, 2003, regarding a kitchen operating without a public health permit. The kitchen was operated by Olive Tree and located at a facility called Piper Tech, 555 Ramirez Street, Los Angeles, California ("Ramirez property").

On April 7, 2003, Environmental Health inspector Patrick Ochoa arrived at the Ramirez property to verify the complaint. Mr. Ochoa confirmed that Olive Tree did not maintain a public health permit at the Ramirez property and immediately ordered Olive Tree to discontinue operations.

On the morning of April 8, 2003, Ms. Frias (Chief of the Food & Milk Program) and two other inspectors entered the Ramirez property for an inspection of the facility for the purpose of determining whether the kitchen qualifies for a public health permit. Ms. Frias determined that numerous meals were found to be within the temperature "danger zone." After Ms. Frias informed the owners of her intention to order the destruction of the meals because they were deemed in the "danger zone," Mr. Berookhim and his son became irate and physically accosted Ms. Frias. After calling the police to assist in completing the inspection of the facility, Ms. Frias issued an order to close the facility and to direct Olive Tree to attend a hearing.

After an April 10, 2003, hearing, Alfonso Medina, the acting Environmental Health Director of Consumer Protection, issued a notice of decision stating that Olive Tree was to discontinue operations due to lack of a public health permit.

After closing its operations at the Ramirez property, Olive Tree moved its operations to a facility owned and operated by Clayton Colbert. Mr. Colbert alleged that sometime in May or June of 2003, Ms. Frias called him and told him he was not to do business with Olive Tree or Mr. Berookhim. He alleged that Ms. Frias told him Mr. Berookhim would never be allowed to open another restaurant again in California. This is denied and would be a disputed issue before the jury.

Olive Tree alleges that a memorandum prepared by Environmental Health employees showed that Ms. Frias called its clients in order to discourage them from patronizing Fresh N' Fast dba Olive Tree by informing them that Fresh N' Fast did not have a public health permit. In his deposition testimony, Mr. Medina testified that the memorandum was created to determine whether private schools in Los Angeles County were using catering businesses which had public health permits. However, Mr. Medina was unable to explain why the memorandum was entitled "Olive Tree Project" and only included Olive Tree's clients. Because the memorandum is unclear, a jury could view the document as evidence that the Environmental Health only made calls to Olive Tree's clients to discourage them from doing business with Olive Tree.

In June 2003, Olive Tree ceased operations. Olive Tree alleges that a letter prepared by Ms. Frias discouraged its clients from doing business with Olive Tree by requiring Olive Tree to hand deliver meals to the children, which was not normally the requirement. Although Ms. Frias admits to drafting the letter, the County disputes Olive Tree's interpretation of the letter. Since the wording of the letter is unclear, the jury could view the letter as Ms. Frias' intent to prevent Olive Tree from doing business with its clients. Olive Tree essentially claims the County and Ms. Frias drove it out of business.

DAMAGES

Should this case proceed to trial, the potential damages could be:

Cost of moving and remodeling to Fresh N' Fast facility:	\$ 140,000
Loss of income for first year:	\$ 180,000
Potential future earnings:	<u>\$2,000,000¹</u>
Total	\$2,320,000

¹This figure is what plaintiff is claiming, subject to proof. The parties have settled before experts could render their opinion.

STATUS OF CASE

The parties reached a tentative settlement of \$50,000, pending the approval of the Claims Board. To date, we have spent approximately \$65,000 in legal fees and \$5,000 in costs, for a total of approximately \$70,000.

Olive Tree's counsel has requested a continuance of the final status conference and the trial pending consideration of this proposed settlement.

EVALUATION

Although the County has been dismissed from the lawsuit, the denial of the motion for summary judgment as to Ms. Frias obligates the County to defend her.

Art Aguirre, Director of Environmental Health, and Mr. Medina have agreed that Ms. Frias' actions were within the course and scope of her duties as the Chief of the Food and Milk Program. Therefore, the question of settling this matter is a pragmatic one.

The recommendation to settle this matter has been presented before the County Counsel roundtable process. All participants at the roundtable have agreed that the cost and time necessary for County Counsel to prepare for trial, as well as costs related to experts and the potential risk of putting this case before a jury would greatly exceed the cost of settling the matter. The costs related to County Counsel's preparation and expert witnesses alone can reach \$50,000. Furthermore, there would be costs related to County employees being excused from their jobs in order to prepare and testify for trial, which would equate to thousands of dollars of lost productivity.

Additionally, if Olive Tree were able to convince a jury of its interpretation of the events, the verdict could potentially far exceed the amount of this settlement. The recommended settlement of this case avoids the costs and risks identified above.

Therefore, in order to limit the costs of trial and the potential liability the County may suffer, County Counsel recommends settling this matter for \$50,000.

APPROVED:



RICHARD K. MASON
Assistant County Counsel
Health Services Division

EY:if

COUNTY OF LOS ANGELES CLAIMS BOARD

MINUTES OF REGULAR MEETING

May 1, 2006

This regular meeting of the County of Los Angeles Claims Board was called to order at 8:03 a.m. The meeting was held in the Executive Conference Room, 648 Kenneth Hahn Hall of Administration, Los Angeles, California.

Present at the meeting were Claims Board Members: Maria M. Oms, Rocky Armfield, and John F. Krattli; Outside Counsel: John Collins, Elizabeth Kessel; The Office of the County Counsel: Narbeh Bagdasarian, Brian Chu, Sheilah Curtis, Julianne Doi, Elizabeth Miller, Stephen Morris, Robert Nagle, Lester Tolnai, and Judy Whitehurst; Sheriff's Department: Shaun Mathers, Pat Hunter, Tom Flaherty, and Rod Penner; Department of Animal Care and Control: Marcia Mayeda; Department of Children and Family Services: Sandy Stivers; Department of Health Services: Patricia Adams and Larry Gatton; Department of Public Social Services: Lisa Nunez and Luther Evans; Department of Public Works: Allan Abramson, Charles Adams, and William Winter; Internal Services Department: Dave Lambertson and Joe Sandoval; Office of Affirmative Action Compliance: Hayward Harris, Jr.; Registrar-Recorder/County Clerk: Kristin Heffron

No members of the public addressed the Claims Board.

At 8:02 a.m., the Chairperson adjourned the meeting into closed session. At 10:35 a.m., the public meeting was reconvened.

The Claims Board took the following actions:

- a. Indra Systems, Inc. v. County of Los Angeles
Los Angeles Superior Court Case No. BC 323 293

This lawsuit concerns a breach of contract arising from a purchase order from the Internal Services Department.

The Claims Board recommended to the Board of Supervisors the settlement of this matter in the amount of \$237,500 as set forth in the Claims Board memorandum.

The vote of the Claims Board was unanimous with all members present.

- b. Keiana Harrison v. County of Los Angeles
Los Angeles Superior Court Case No. BC 328 490

This lawsuit concerns allegations that an employee of the Department of Public Social Services was subjected to sexual harassment.

The Claims Board approved settlement of this matter. The substance of the above settlement will be disclosed upon inquiry by any person as soon as the settlement becomes final following approval by all parties.

The vote of the Claims Board was unanimous with all members present.

COUNTY OF LOS ANGELES CLAIMS BOARD
MINUTES OF REGULAR MEETING

- c. Ingrid Johannah Mondragon v. County of Los Angeles
Los Angeles Superior Court Case No. BC 330 682

This lawsuit concerns allegations that an employee of the Department of Animal Care and Control was subjected to sexual harassment and discrimination.

The Claims Board approved settlement of this matter. The substance of the above settlement will be disclosed upon inquiry by any person as soon as the settlement becomes final following approval by all parties.

The vote of the Claims Board was unanimous with all members present.

- d. Claim of Christian Garcia
OAAC Charge No. DPW 05-0203

This claim concerns allegations of racial harassment and sex discrimination.

The Claims Board approved settlement of this matter. The substance of the above settlement will be disclosed upon inquiry by any person as soon as the settlement becomes final following approval by all parties.

The vote of the Claims Board was unanimous with all members present.

- e. Samuel Stella v. County of Los Angeles
Los Angeles Superior Court Case No. BC 322 735

This lawsuit concerns allegations that an employee of the Department of Public and Social Services was subjected to racial harassment and discrimination.

The Claims Board recommended to the Board of Supervisors the settlement of this matter in the amount of \$145,000 as set forth in the Claims Board memorandum.

The vote of the Claims Board was unanimous with all members present.

- f. Ary Leite v. County of Los Angeles
Los Angeles Superior Court Case No. BC 302 592

This lawsuit concerns allegations that an employee of the Sheriff's Department was subjected to age discrimination.

The Claims Board recommended to the Board of Supervisors the settlement of this matter in the amount of \$275,000 as set forth in the Claims Board memorandum.

The vote of the Claims Board was unanimous with all members present.

COUNTY OF LOS ANGELES CLAIMS BOARD
MINUTES OF REGULAR MEETING

- g. Mary Craig v. County of Los Angeles
United States District Court Case No. CV 05-01711 ER

This lawsuit seeks compensation for a death which occurred while in the custody of the Sheriff's Department.

The Claims Board recommended to the Board of Supervisors the settlement of this matter in the amount of \$300,000 as set forth in the Claims Board memorandum.

The vote of the Claims Board was unanimous with all members present.

- h. Gregory L. Harris v. County of Los Angeles
Los Angeles Superior Court Case No. TC 017 976

This medical negligence lawsuit arises from injuries sustained by a patient while hospitalized at Harbor-UCLA Medical Center.

The Claims Board recommended to the Board of Supervisors the settlement of this matter in the amount of \$150,000, plus assumption of the Medi-Cal Lien not to exceed \$83,281.93 as set forth in the Claims Board memorandum.

The vote of the Claims Board was unanimous with all members present.

- i. Sonia Escobar, Israel Portillo v. County of Los Angeles
Los Angeles Superior Court Case No. SC 085 338

This wrongful death lawsuit arises from injuries sustained by a patient while hospitalized at Harbor-UCLA Medical Center.

This matter was continued to the next Claims Board meeting.

- j. Rouvenie Robianes, et al. v. County of Los Angeles
Lancaster Superior Court Case No. MC 013 949

This lawsuit seeks compensation for injuries received in an automobile accident.

The Claims Board recommended to the Board of Supervisors the settlement of this matter in the amount of \$1,750,000 as set forth in the Claims Board memorandum.

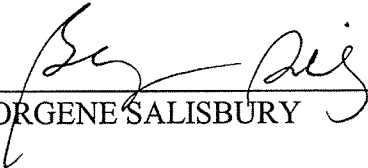
The vote of the Claims Board was unanimous with all members present.

COUNTY OF LOS ANGELES CLAIMS BOARD
MINUTES OF REGULAR MEETING

Minutes for the April 3, 2006 meeting was approved.

There being no further business, the meeting was adjourned at 10:45 a.m. The next regular meeting will be held on May 15, 2006.

COUNTY OF LOS ANGELES CLAIMS BOARD

By  _____
GEORGENE SALISBURY